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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/291,656	03/03/1999	MARC PETERS-GOLDEN	UM-03662	2349

7590

11/27/2002

Medlin & Carroll LLP
101 Howard Street Suite 350
San Francisco, CA 94105

EXAMINER

CARLSON, KAREN C

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ART UNIT

PAPER NUMBER

1653

DATE MAILED: 11/27/2002

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/291,656

Applicant(s)

PETERS-GOLDEN ET AL.

Examiner

Karen Cochran Carlson, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 September 2002. **BEST AVAILABLE C**
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-25 and 27-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-25 and 27-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- ☐ Interview Summary (PTO-413) Paper No(s) _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 19, 2002 (Paper #16) has been entered.

Claims 1-21 and 26 have been canceled. Claims 22-25 and 27-37 are currently pending and are under examination.

The disclosure is objected to because of the following informalities: The cross-reference to parent applications should be set forth on page 1 of the specification.

Appropriate correction is required.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-25 and 27-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gosselin et al. (USP 5,789,441; priority to February 15, 1996).

Gosselin et al. teach leukotriene LTB₄ in a sterile liquid (cols. 11-13 and Example I, col. 14, lines 15-16, for example). The term "LTB₄" includes leukotrienes C₄, D₄, and E₄ (col. 6, line 52).

Gosselin et al. do not expressly teach that to include an antibiotic to the a solution comprising a sterile liquid and a leukotriene. However, at col. 5, lines 24-29, Gosselin et al. states that the invention provides for the use of an LTB₄ agent as a therapeutic against Gram+ and –

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infections, or fungal infections alone or in association with other antibacterial or antifungal agents.

Therefore, it would have been obvious to a person having ordinary skill in the art to include an antibiotic in a solution comprising a sterile liquid and a leukotriene (Claims 22, 26, 27, 28, 32, 33, 37), wherein the leukotriene is LTB₄ (Claims 23, 29, 34), or wherein the leukotriene is a cysteinyl leukotriene (Claim 24, 3, 35) such as leukotrienes C₄, D₄, and E₄ (Claims 25, 31, 36) because Gosselin et al. suggests to use LTB₄ with an antibacterial or antifungal agent against Gram+ and - infections, or fungal infections.

While the claims recite that the solution aerosolized or is in an endotracheal tube, a bronchoscope, or a nebulizer, for example, these phrases are given no patentable weight. See *Union Oil Co. of California v. Atlantic Richfield Co.*, 54 USPQ2d 1227, *In re Rosicky*, 125 USPQ 341; *In re Riden et al.*, 138 USPQ 112; *In re Lerner* 169 USPQ 51. Therefore, the Claims are obvious over Gosselin et al. as set forth above.

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No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karen Cochrane Carlson, Ph.D. whose telephone number is 703-308-0034. The examiner can normally be reached on 7:30 AM - 5:00 PM, off alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Christopher Low can be reached on 703-308-2329. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.

Karen Cochrane Carlson PhD
KAREN COCHRANE CARLSON, PH.D.
PRIMARY EXAMINER